

**BEFORE THE**  
**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**  
**DOCKET NO. 2019-390-E**

IN RE: Ganymede Solar, LLC,	)	<b>DOMINION ENERGY</b>
	)	<b>SOUTH CAROLINA,</b>
Petitioner,	)	<b>INC.'S RESPONSE IN</b>
	)	<b>OPPOSITION TO</b>
Dominion Energy South Carolina,	)	<b>MOTION FOR</b>
Inc.,	)	<b>CLARIFICATION OF</b>
	)	<b>DIRECTIVE ORDER</b>
Respondent.	)	<b>NO. 2020-43</b>
	)	

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Pursuant to S.C. Code Ann. Regs. § 103-829(A) and other applicable rules of practice and procedure of the Public Service Commission of South Carolina (“Commission”), Dominion Energy South Carolina, Inc. (formerly South Carolina Electric & Gas Company) (“DESC”) responds in opposition to Ganymede Solar, LLC’s (“Solar Developer”) Motion for Clarification, filed on January 27, 2020, in the above-referenced docket (the “Motion”). For the reasons set forth below, DESC respectfully requests that the Motion be denied.

**1. The Motion contains improper requests for relief.**

Although Solar Developer styled the Motion as a “Motion for Clarification,” the Motion does not actually request any clarification of Order No. 2020-43 (the “Order”). Indeed, the Order simply advised the parties that Solar Developer’s Motion to Maintain Status Quo—filed on December 20, 2019, in the above-referenced docket—has been taken under advisement by the Commission. On this point, the only point of consequence in the Order, Solar Developer clearly comprehends the Order, and it acknowledged the same when stating that “this Commission

notified the parties that the Project's Motion to Maintain Status Quo was under advisement." Motion at 1.

Rather, the Motion is a calculated attempt by Solar Developer to utilize a "trojan-horse" approach to launch *ad hominem* attacks and improperly request—yet again—for this Commission to grant Solar Developer injunctive relief. As discussed in more detail below, this Commission has expressly acknowledged it is unable to grant such injunctive relief. Aside from the *ad hominem* attacks, the Motion simply re-litigates arguments Solar Developer previously put forth in its Motion to Maintain Status Quo, Petition, Amended Petition, and Informational Filing. As a result, DESC is, yet again, forced to respond to Solar Developer's familiar misguided allegations to ensure Solar Developer's statements do not go uncontested. As DESC indicated time and again, Solar Developer failed to (i) perform its bargained-for and negotiated obligations under the Interconnection Agreement that DESC and Solar Developer executed on May 7, 2018, and amended on June 15, 2018 (as amended, the "IA"); (ii) timely request relief; and (iii) provide a clear request for relief.

**2. Solar Developer failed to perform its bargained-for and negotiated obligations under the IA.**

Solar Developer failed to submit its second milestone payment ("Milestone Payment 2") on or before December 27, 2019—the due date under the IA. As memorialized in Appendix 4 of the IA and in DESC's Answer—filed on January 21, 2020, in the above-referenced docket (the "DESC Answer")—Solar Developer agreed to a series of project milestones detailing "critical" construction and payment milestones and responsibilities. *See* DESC Answer at 3-4. The payment milestones represent the total estimated cost of certain facilities, equipment, and upgrades necessary to interconnect Solar Developer's project with DESC's system. These are neither fees nor charges. These are the actual costs of the facilities required to interconnect the

project that Solar Developer decided to build—a decision that was made by Solar Developer and not by DESC or in response to a request by DESC. Ironically, although Solar Developer complains of DESC’s termination of its IA, it is the Solar Developer’s actions—not DESC’s—that led to such termination.

Not only does Appendix 2 of the IA make clear that missing the due date for Milestone Payment 2 “may result in termination of the [IA],” but Solar Developer’s own Amended Petition notes that “[u]nless this Commission modifies the Milestone payment schedule, the Project will be terminated.” Amended Petition at 4, filed on January 24, 2020, in Docket No. 2019-390-E. Given that Solar Developer acknowledged to this Commission that the IA would terminate absent Commission action, it is difficult to understand why Solar Developer now makes statements to the contrary in its Motion. For example, Solar Developer now seems to assert that it was no longer required to submit Milestone Payment 2 the moment the “Commission assumed jurisdiction” over this matter. Motion at 1. This is a far-cry from the requested modification of the payment schedule that Solar Developer once opined was required to prevent termination of the IA. *See* Amended Petition. In fact, Solar Developer’s logic must necessarily mean that every other counterparty to an interconnection agreement with DESC could find reprieve from their obligations thereunder simply by having a filing accepted by this Commission. The logic behind Solar Developer’s new assertion does not stand up to even the slightest scrutiny.

On the other hand, DESC complied with its obligations under the IA. DESC submitted a default notice to Solar Developer on December 30, 2019, in accordance with Section 7.6.1 of the IA. The default notice advised of Solar Developer’s (i) default under the IA resulting from its failure to submit Milestone Payment 2 on or before December 27, 2019, and (ii) right to cure such default under Section 7.6.1 of the IA by submitting Milestone Payment 2 on or before January 7, 2020. To be clear, Solar Developer had the right to cure its default under the IA and

DESC complied with its obligation under the IA by affording Solar Developer the opportunity to cure such default. However, during that cure period, Solar Developer did not contact DESC about its efforts to cure, but did make yet another filing with this Commission which contained familiar misguided allegations. *See* Informational Filing, filed on January 3, 2020, in Docket No. 2019-390-E. Solar Developer used this cure period to submit yet another filing with this Commission that expounded upon familiar arguments, rather than taking meaningful steps to preserve its project.

**3. Solar Developer failed to acknowledge settled law.**

Solar Developer waited until it was on the verge of violating its obligation to request that the Commission act *ultra vires* by granting injunctive relief, which this Commission has acknowledged that it cannot grant. Order No. 2019-521 at 1 (“This Commission has not been authorized by statute to grant injunctive relief”). Indeed, captioning it as a Motion to Maintain Status Quo, or any other term one can imagine, does not change the fact that it is a request for injunctive relief. *See Powell v. Immanuel Baptist Church*, 199 S.E.2d 60, 61 (1973) (stating that “[t]he sole purpose of an injunction is to preserve the status quo”). If Solar Developer truly desired to maintain the status quo, then it would not have requested that the Commission change the terms of the IA. However, that is precisely what Solar Developer requests—thus, Solar Developer yet again seeks injunctive relief that this Commission cannot grant.

DESC acknowledges that the Commission has certain power over these contracts and could take actions to modify respective rights of the parties thereunder “if the public interest so requires.” S.C. Code Ann. § 58-27-980. However, the Commission has yet to declare that bailing out Solar Developer from the obligations it negotiated is in the “public interest”—thus, the Commission has not modified the bargained-for and negotiated rights and obligations that the parties agreed to in the IA. As a result, the IA was terminated. Contrary to Solar Developer’s

brazen assertions in the Motion, DESC is not ignoring the Commission's broad authority, its expertise, or the Order. DESC is regulated by the Commission and regularly appears before the Commission. Frankly, it is disingenuous to argue that DESC "**has acted contrary**" to this Commission's authority. Motion at 1 (emphasis in original). As DESC clearly stated in its Response in Opposition to Motion to Maintain Status Quo:

DESC acknowledges that the Commission may modify certain rights of the parties with respect to the IA, [however] this authority should be preserved for only those situations that further substantial public interests—such as avoiding harm to the ratepayer—and not merely to step into the shoes of a sophisticated party and re-negotiate an interconnection agreement on such party's behalf.

DESC's Response in Opposition to Motion to Maintain Status Quo at 4-5, filed on December 30, 2019, in Docket No. 2019-390-E.

As such, DESC will comply with any decision by this Commission that is made in accordance with its authority. However, to date, no such decision has been made. Indeed, the Order did not direct DESC to revive the IA or re-instate the project's queue status. Therefore, the IA remains terminated.

**4. Solar Developer failed to provide a basis for relief.**

Even if Solar Developer's unfounded allegations find favor with the Commission, it is unclear whether this Commission can actually remedy Solar Developer's complained-of ails. Indeed, Solar Developer failed to demonstrate to the Commission the specific steps it will take to finance an "unfinanceable" project in accordance with its obligations under the IA. Petitioner's Motion to Maintain Status Quo at 1, filed on December 20, 2019, in Docket No. 2019-390-E. Solar Developer has not even laid out a discernible path forward to guide this Commission in its ruling, provided any rationale as to how more time would alleviate the project's current mismanagement, or provided any "public interest"—clearly a high threshold—that would justify

the Commission taking the extraordinary step of reviving and amending a contract that was bargained-for and negotiated by two sophisticated parties.

### **CONCLUSION**

Solar Developer can continue to attack DESC, mischaracterize DESC's actions, provide no acceptable public interest to this Commission, and utilize various forms of pleadings and informational filings in a "see-what-works" approach. However, none of these tactics change the facts—Solar Developer's breach of the IA led to termination of the IA, and the IA will remain terminated unless this Commission finds a public interest sufficient to justify reviving and amending the IA.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

/s/ J. Ashley Cooper

K. Chad Burgess, Esquire

Matthew W. Gissendanner, Esquire

**Dominion Energy South Carolina, Inc.**

Mail Code C222

220 Operation Way

Cayce, South Carolina 29033-3701

Phone: (803) 217-8141

Fax: (803) 217-7810

Email: chad.burgess@scana.com

J. Ashley Cooper, Esquire

**Parker Poe Adams & Bernstein LLP**

200 Meeting Street

Suite 301

Charleston, South Carolina 29401

Phone: (843) 727-2674

Fax: (843) 727-2680

Email: ashleycooper@parkerpoe.com

*Attorneys for Dominion Energy South Carolina,  
Inc.*

Cayce, South Carolina  
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# CERTIFICATE OF SERVICE

Alexander W. Knowles, Esquire  
Christopher Huber, Esquire  
**OFFICE OF REGULATORY STAFF**  
1401 Main Street, Suite 900  
Columbia, South Carolina 29201  
*Email: aknowles@ors.sc.gov*  
*Email: chuber@ors.sc.gov*

This 29th day of January, 2020